IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-140201 TRIAL NO. 13CRB-34776
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
MARLIN JOHNSTON,[1]	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Marlin Johnston appeals from the judgment of the Hamilton County Municipal Court convicting him of failure to comply with an order or signal of a police officer, in violation of R.C. 2921.331(A).

Cincinnati police officers Brandon Cook and Ben Miller effectuated a traffic stop of the vehicle in which Johnston was a passenger. The officers charged the driver with operating a vehicle without a license. Because Johnston had not appeared to have been wearing his seat belt before the traffic stop, the officers asked Johnston for identification so that they could cite him for the traffic offense of failure to wear a restraining device. Both officers testified that Johnston had repeatedly refused to comply with their order for identification, and they subsequently arrested him for his failure to comply. Additionally,

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[1] The defendant identified himself as "Marlon" Johnston at trial, but he is identified in the complaint and in the notice of appeal as "Marlin" Johnston.

after locating Johnston's identification card in his wallet, the officers cited Johnston for the seat-belt violation.

At trial, Johnston testified that he had been wearing his seat belt before the traffic stop and that he had only been slow in retrieving his identification from his wallet. Subsequently, the trial court convicted Johnston of the failure-to-comply offense, but acquitted him of the seat-belt offense.

We overrule Johnston's first assignment of error that challenges the sufficiency and manifest weight of the evidence to support his conviction for failure to comply. First, based upon the evidence adduced at trial, reasonable minds could have reached different conclusions as to whether each element of the offense had been proved beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Contrary to Johnston's argument, "operation" of a vehicle was not an element of the offense set forth in R.C. 2921.331(A). *See State v. McDonald*, 137 Ohio St.3d 517, 2013-Ohio-5042, 1 N.E.3d 374, ¶ 21.

And second, we find nothing in the record of the proceedings below to suggest that the trial court, in resolving the conflicts in the evidence adduced on the charged offense, lost its way or created such a manifest miscarriage of justice as to warrant the reversal of Johnston's conviction. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We note that the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

We overrule Johnston's second assignment of error, because Johnston failed to demonstrate that the trial court erred by failing to dismiss the failure-to-comply

charge. According to Johnston, the state had charged him under the wrong statute, in contravention of R.C. 1.51.

Generally, R.C. 1.51 applies when there is an "irreconcilable" conflict between a general and a special or local provision concerning allied offenses of similar import that are not committed separately or with a separate animus. *See State v. Chippendale*, 52 Ohio St.3d 118, 120, 556 N.E.2d 1134 (1990). When that occurs, the "special or local provision prevails as an exception to the general provision, unless the general provision is the later adopted and the manifest intent is that the general provision prevail." R.C. 1.51. Johnston contends that the state should have charged him with failure to disclose, in violation of R.C. 2921.29(B), an offense with a lesser penalty than the offense of failure to comply in violation of R.C. 2921.331(A).

Assuming that R.C. 1.51 applies to these offenses, R.C. 2921.331(A) sets forth the more specific offense because it applies only to a "fail[ure] to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic." Although the statute setting forth the failure-to-disclose offense was enacted later in time, there is no manifest intent that the failure-to-disclose statute prevail over R.C. 2921.331(A). *See State v. Frost*, 57 Ohio St.2d 121, 124-125, 387 N.E.2d 235 (1979). Therefore, we do not find that the provisions of R.C. 1.51 prohibited the state from charging Johnston under R.C. 2921.331(A).

Accordingly, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and **FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on November 19, 2014

per order of the court _____.
Presiding Judge